IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5970 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PANKAJ N PATEL

Versus

STATE OF GUJ

Appearance:

MR GT DAYANI for Petitioner

MS MANISHA LAVKUMAR, AGP, for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/07/2000

ORAL JUDGEMENT

1. Challenge has been made by the petitioner to the notices dated 24th December, 1990, 28th January, 1991 and 9th August, 1991 issued by the respondent demanding therein from him Rs.17,49,967/-, and Rs.87,498-35 as surcharge. The demand for these two amounts has been

made from the petitioner, the recovery of which has been proceeded as a land revenue under the provisions of Land Revenue Code.

2. This petition has been contested by the respondents by filing a detailed reply to the same.

3. It is the contention of the learned counsel for the petitioner that this alleged liability of the petitioner for these two sums has not been adjudicated and decided by the competent authority and it cannot be recovered as a land revenue. In support of his contention, he placed reliance on the two decisions of this court in special civil application No.7851 of 1994 decided on 31-3-1995 and in special civil application No.8498 of 1991 decided on 28-2-1994.

4. Ms. Manisha Lavkumar, AGP, on the other hand contended that for recovery of these amounts rightly a certificate has been issued to the Collector for recovering thereof as a land revenue. It is stated in reply that the petitioner has filed a suit in respect of the same contract to recover damages from the State Government and this suit is pending. This petition on this ground, what it is alleged, is not maintainable. It is submitted that the certificate for recovery of the amounts has been issued by the Department after giving full opportunity of hearing to the petitioner but he has chosen not to give reply to the notices.

5. Learned counsel for the petitioner stated that the suit is also filed for recovery of these very amounts and which is pending. This suit has been transferred to the Tribunal. These facts have been stated orally and I do not find anything on the record of this special civil application in support thereof.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

7. On 29th August, 1991, this matter was placed for preliminary hearing and on which date, notice was issued to the respondents but interim relief was refused. Learned counsel for the petitioner states that against this order of the learned Single Judge dated 29th August, 1991, the petitioner preferred L.P.A.. but L.P.A. has also been withdrawn, meaning thereby, this court has not granted any interim relief in favour of the petitioner. Learned counsel for the petitioner on being put by the Court admitted that the petitioner has not paid a single pie towards this demand made against him. It is really

shocking that the petitioner who approached to this court for grant of relief under its extraordinary jurisdiction to him, has not paid this amount when stay has not been granted. Once the amount has been demanded, leaving apart its legality, propriety and correctness, where interim relief has not been granted, it is the duty of the petitioner to pay that amount. This conduct of the petitioner not to pay that amount though this Court has not granted interim relief deserves to be deprecated and only on this ground he in fact, disentitle himself from getting any relief from this Court. The extraordinary equitable jurisdiction of this Court is meant for the bonafide, honest and law abiding citizens and not for those citizens who are not complying with the orders challenged in the special civil applications. Once a demand has been made, if it is not stayed, it is the duty of the petitioner to pay the same. If ultimately the petitioner succeeds in the special civil application, the Court can take care of the circumstances and it could have ordered for refund of the same to him with commercial rate of interest but here the petitioner made all the attempts to get the interim relief and when he failed it is his legal duty to pay this amount and as he failed to discharge the legal obligation and duty, this petition deserves to be dismissed only on this conduct of the petitioner. A conduct of the litigant who approached to the Court for exercise of its extraordinary jurisdiction in its favour is utmost, important and relevant and where his conduct is dubious and where he is not acting fairly and reasonably and as a law abiding citizen it is a good ground for dismissal of the special civil application. In such matters, the court legitimately may not go on the merits of the matter and dismiss the petition only on this ground.

8. It is also shocking that the respondents though stay was not there in favour of the petitioner, have not made any attempt to recover these amounts. That shows that the Officers of the State of Gujarat are favouring the petitioner. This favour extended to the petitioner by the Officers of the State of Gujarat equally deserves to be deprecated. The State of Gujarat has to correct its Office. It appears that the State of Gujarat is not noticing the fact that though its Officers are being paid by it for serving the State, they serve the interest of the defaulters for their benefit or for some extraneous consideration. If these things are not corrected then the graph of corruption, which is stated to be rampant in the country, will increase day by day. However, it is a matter to be taken care of by the State of Gujarat and not by this Court.

9. In the result, this special civil application fails and the same is dismissed. Rule discharged. Copy of this order be sent to the Chief Secretary of the State of Gujarat to hold an inquiry in the matter as to why these amounts could not be recovered from the petitioner though in the special civil application, interim relief has not been granted. If on holding an inquiry, the Chief Secretary is satisfied that with the connivance of the Officers of the State, this recovery could not be effected then against those erring Officers a departmental inquiry may be initiated and on proof of the charge, they may be appropriately punished. Compliance of the order be reported to this Court.

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